

110TH CONGRESS
1ST SESSION

H. R. 2851

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2007

Mr. HODES (for himself, Mr. CASTLE, Ms. SHEA-PORTER, Mr. NADLER, Mrs. MCCARTHY of New York, Mr. DAVIS of Illinois, Ms. SUTTON, Mrs. BOYDA of Kansas, Mr. MCGOVERN, Mr. STARK, Ms. CASTOR, Ms. CLARKE, Mr. COHEN, Mr. JOHNSON of Georgia, Mrs. LOWEY, Mr. EDWARDS, Mr. EMANUEL, Ms. SOLIS, Ms. ZOE LOFGREN of California, Mr. LANTOS, Mr. SHERMAN, Mr. WU, Mr. LINCOLN DAVIS of Tennessee, Mr. KAGEN, Mr. LARSON of Connecticut, Mr. BERRY, Mr. McDERMOTT, Mrs. TAUSCHER, Ms. HARMAN, Mr. GUTIERREZ, Mr. SCOTT of Virginia, Ms. SCHAKOWSKY, Mr. MITCHELL, Mr. SARBANES, Ms. KAPTUR, Mr. GILCHREST, Mr. BARROW, Mr. McNULTY, Mr. WELCH of Vermont, Ms. SCHWARTZ, Mr. BRALEY of Iowa, Mr. ELLISON, Mr. REGULA, and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and Labor and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Michelle’s Law”.

5 **SEC. 2. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**
 6 **CALLY NECESSARY LEAVE OF ABSENCE.**

7 (a) AMENDMENTS OF ERISA.—

8 (1) IN GENERAL.—Subpart B of part 7 of title
 9 I of the Employee Retirement Income Security Act
 10 of 1974 (29 U.S.C. 1185 et seq.) is amended by
 11 adding at the end the following:

12 **“SEC. 714. COVERAGE OF DEPENDENT STUDENTS ON MEDI-**
 13 **CALLY NECESSARY LEAVE OF ABSENCE.**

14 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—

15 In this section, the term ‘medically necessary leave of ab-

16 sence’ means, with respect to a dependent child described

17 in subsection (b)(2), a leave of absence of such child from

18 a postsecondary educational institution (including an in-

19 stitution of higher education as defined in section 102 of

20 the Higher Education Act of 1965), or any other change

21 in enrollment of such child at such an institution, that—

22 “(1) commences while such child is suffering

23 from a severe illness or injury;

24 “(2) is medically necessary; and

1 “(3) causes such child to lose full-time student
2 status under the terms of the plan.

3 “(b) REQUIREMENT TO CONTINUE COVERAGE.—

4 “(1) IN GENERAL.—In the case of a dependent
5 child described in paragraph (2), a group health
6 plan (or health insurance coverage offered in connec-
7 tion with such a plan) shall not terminate coverage
8 of such child due to a medically necessary leave of
9 absence before the date that is the earlier of—

10 “(A) the date that is 1 year after the first
11 day of the medically necessary leave of absence;
12 or

13 “(B) the date on which such coverage
14 would otherwise terminate under the terms of
15 the plan.

16 “(2) DEPENDENT CHILD DESCRIBED.—A de-
17 pendent child described in this paragraph is a bene-
18 ficiary under the plan who—

19 “(A) is a dependent child, under the terms
20 of the plan, of a participant or beneficiary of
21 the plan;

22 “(B) was enrolled in the plan or coverage
23 as of the first day of the medically necessary
24 leave of absence involved; and

1 “(C) was enrolled as a full-time student at
2 a postsecondary educational institution (as de-
3 scribed in subsection (a)) until the first day of
4 the medically necessary leave of absence in-
5 volved.

6 “(3) CERTIFICATION BY PHYSICIAN.—Para-
7 graph (1) shall not apply to a group health plan (or
8 health insurance coverage offered in connection with
9 such a plan) unless certification by the child’s at-
10 tending physician is submitted to the plan or issuer
11 stating that the dependent child is suffering from a
12 severe illness or injury and that the leave of absence
13 is medically necessary.

14 “(c) NO LOSS OF FULL-TIME STATUS DUE TO
15 BREAK IN SEMESTER.—Any breaks in the school semester
16 shall not disqualify a dependent child described under sub-
17 section (b) from coverage under this section.

18 “(d) NO CHANGE IN BENEFITS.—A dependent child
19 whose benefits are continued under this section shall be
20 entitled to the same benefits as if (during the medically
21 necessary leave of absence) the child continued to be a
22 full-time student at the institution of higher education and
23 was not on a medically necessary leave of absence.

24 “(e) COVERAGE UNDER SUCCESSOR PLAN.—If a
25 plan sponsor changes group health plans after the first

1 day of a medically necessary leave of absence of dependent
 2 child described in subsection (b) but before the date de-
 3 scribed under subsection (b)(1), and such new group
 4 health plan offers coverage of beneficiaries as dependent
 5 children, such new group health plan shall be subject to
 6 this section in the same manner as the predecessor group
 7 health plan.

8 “(f) PRESUMPTION.—For purposes of administrative
 9 or judicial proceedings, upon certification under sub-
 10 section (b)(3), there shall be a rebuttable presumption
 11 that the requirements of paragraphs (1) and (2) of sub-
 12 section (a) have been met.”.

13 (2) CONFORMING AMENDMENT.—The table of
 14 contents in section 1 of such Act is amended by in-
 15 serting after the item relating to section 713 the fol-
 16 lowing new item:

“Sec. 714. Coverage of dependent students on medically necessary leave of ab-
 sence.”.

17 (b) AMENDMENTS TO THE PUBLIC HEALTH SERVICE
 18 ACT.—

19 (1) GROUP MARKETS.—Subpart 2 of part A of
 20 title XXVII of the Public Health Service Act (42
 21 U.S.C. 300gg–4 et seq.) is amended by adding at
 22 the end the following new section:

1 **“SEC. 2707. COVERAGE OF DEPENDENT STUDENTS ON**
 2 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

3 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—

4 In this section, the term ‘medically necessary leave of ab-
 5 sence’ means, with respect to a dependent child, a leave
 6 of absence of such child from a postsecondary educational
 7 institution (including an institution of higher education as
 8 defined in section 102 of the Higher Education Act of
 9 1965), or any other change in enrollment of such child
 10 at such an institution, that—

11 “(1) commences while such child is suffering
 12 from a severe illness or injury;

13 “(2) is medically necessary; and

14 “(3) causes such child to lose full-time student
 15 status under the terms of the plan.

16 “(b) REQUIREMENT TO CONTINUE COVERAGE.—

17 “(1) IN GENERAL.—In the case of a dependent
 18 child described in paragraph (2), a group health
 19 plan (or health insurance coverage offered in connec-
 20 tion with such a plan) shall not terminate coverage
 21 of such child due to a medically necessary leave of
 22 absence before the date that is the earlier of—

23 “(A) the date that is 1 year after the first
 24 day of the medically necessary leave of absence;
 25 or

1 “(B) the date on which such coverage
2 would otherwise terminate under the terms of
3 the plan.

4 “(2) CHILD DESCRIBED.—A dependent child
5 described in this paragraph is a beneficiary under
6 the plan who—

7 “(A) is a dependent child, under the terms
8 of the plan, of a participant or beneficiary of
9 the plan;

10 “(B) was enrolled in the plan or coverage
11 as of the first day of the medically necessary
12 leave of absence involved; and

13 “(C) was enrolled as a full-time student at
14 a postsecondary educational institution (as de-
15 scribed in subsection (a)) until the first day of
16 the medically necessary leave of absence in-
17 volved.

18 “(3) CERTIFICATION BY PHYSICIAN.—Para-
19 graph (1) shall not apply to a group health plan (or
20 health insurance coverage offered in connection with
21 such a plan) unless certification by the child’s at-
22 tending physician is submitted to the plan or issuer
23 stating that the dependent child is suffering from a
24 severe illness or injury and that the leave of absence
25 is medically necessary.

1 “(c) NO LOSS OF FULL-TIME STATUS DUE TO
2 BREAK IN SEMESTER.—Any breaks in the school semester
3 shall not disqualify a dependent child described under sub-
4 section (b) from coverage under this section.

5 “(d) NO CHANGE IN BENEFITS.—A dependent child
6 whose benefits are continued under this section shall be
7 entitled to the same benefits as if (during the medically
8 necessary leave of absence) the child continued to be a
9 full-time student at the institution of higher education and
10 was not on a medically necessary leave of absence.

11 “(e) COVERAGE UNDER SUCCESSOR PLAN.—If a
12 plan sponsor changes group health plans after the first
13 day of a medically necessary leave of absence of dependent
14 child described in subsection (b) but before the date de-
15 scribed under subsection (b)(1), and such new group
16 health plan offers coverage of beneficiaries as dependent
17 children, such new group health plan shall be subject to
18 this section in the same manner as the predecessor group
19 health plan.

20 “(f) PRESUMPTION.—For purposes of administrative
21 or judicial proceedings, upon certification under sub-
22 section (b)(3), there shall be a rebuttable presumption
23 that the requirements of paragraphs (1) and (2) of sub-
24 section (a) have been met.”.

1 (2) INDIVIDUAL MARKET.—Subpart 3 of part B
 2 of title XXVII of such Act (42 U.S.C. 300gg–51 et
 3 seq.) is amended by adding at the end the following
 4 new section:

5 **“SEC. 2753. COVERAGE OF DEPENDENT STUDENTS ON**
 6 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

7 “The provisions of section 2707 shall apply to health
 8 insurance coverage offered by a health insurance issuer
 9 in the individual market in the same manner as they apply
 10 to health insurance coverage offered by a health insurance
 11 issuer in connection with a group health plan in the small
 12 or large group market.”.

13 (c) AMENDMENTS TO THE INTERNAL REVENUE
 14 CODE.—

15 (1) IN GENERAL.—Subchapter B of chapter
 16 100 of the Internal Revenue Code of 1986 (relating
 17 to other group health plan requirements) is amended
 18 by inserting after section 9812 the following new
 19 section:

20 **“SEC. 9813. COVERAGE OF DEPENDENT STUDENTS ON**
 21 **MEDICALLY NECESSARY LEAVE OF ABSENCE.**

22 “(a) MEDICALLY NECESSARY LEAVE OF ABSENCE.—
 23 In this section, the term ‘medically necessary leave of ab-
 24 sence’ means, with respect to a dependent child, a leave
 25 of absence of such child from a postsecondary educational

1 institution (including an institution of higher education as
2 defined in section 102 of the Higher Education Act of
3 1965), or any other change in enrollment of such child
4 at such an institution, that—

5 “(1) commences while such child is suffering
6 from a severe illness or injury;

7 “(2) is medically necessary; and

8 “(3) causes such child to lose full-time student
9 status under the terms of the plan.

10 “(b) REQUIREMENT TO CONTINUE COVERAGE.—

11 “(1) IN GENERAL.—In the case of a dependent
12 child described in paragraph (2), a group health
13 plan shall not terminate coverage of such child due
14 to a medically necessary leave of absence before the
15 date that is the earlier of—

16 “(A) the date that is 1 year after the first
17 day of the medically necessary leave of absence;
18 or

19 “(B) the date on which such coverage
20 would otherwise terminate under the terms of
21 the plan.

22 “(2) CHILD DESCRIBED.—A dependent child
23 described in this paragraph is a beneficiary under
24 the plan who—

1 “(A) is a dependent child, under the terms
2 of the plan, of a participant or beneficiary of
3 the plan;

4 “(B) was enrolled in the plan or coverage
5 as of the first day of the medically necessary
6 leave of absence involved; and

7 “(C) was enrolled as a full-time student at
8 a postsecondary educational institution (as de-
9 scribed in subsection (a)) until the first day of
10 the medically necessary leave of absence in-
11 volved.

12 “(3) CERTIFICATION BY PHYSICIAN.—Para-
13 graph (1) shall not apply to a group health plan (or
14 health insurance coverage offered in connection with
15 such a plan) unless certification by the child’s at-
16 tending physician is submitted to the plan (or the
17 issuer health insurance coverage in connection with
18 the plan) stating that the dependent child is suf-
19 fering from a severe illness or injury and that the
20 leave of absence is medically necessary.

21 “(c) NO LOSS OF FULL-TIME STATUS DUE TO
22 BREAK IN SEMESTER.—Any breaks in the school semester
23 shall not disqualify a dependent child described under sub-
24 section (b) from coverage under this section.

1 “(d) NO CHANGE IN BENEFITS.—A dependent child
 2 whose benefits are continued under this section shall be
 3 entitled to the same benefits as if (during the medically
 4 necessary leave of absence) the child continued to be a
 5 full-time student at the institution of higher education and
 6 was not on a medically necessary leave of absence.

7 “(e) COVERAGE UNDER SUCCESSOR PLAN.—If a
 8 plan sponsor changes group health plans after the first
 9 day of a medically necessary leave of absence of a depend-
 10 ent child described in subsection (b) but before the date
 11 described under subsection (b)(1), and such new group
 12 health plan offers coverage of beneficiaries as dependent
 13 children, such new group health plan shall be subject to
 14 this section in the same manner as the predecessor group
 15 health plan.

16 “(f) PRESUMPTION.—For purposes of administrative
 17 or judicial proceedings, upon certification under sub-
 18 section (b)(3), there shall be a rebuttable presumption
 19 that the requirements of paragraphs (1) and (2) of sub-
 20 section (a) have been met.”.

21 (2) CONFORMING AMENDMENT.—The table of
 22 sections for subchapter B of chapter 100 of such
 23 Code is amended by inserting after the item relating
 24 to section 9812 the following new item:

“Sec. 9813. Coverage of dependent students on medically necessary leave of ab-
 sence.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this Act shall apply with respect to plan years beginning
3 on or after the date of the enactment of this Act and to
4 medically necessary leaves of absence beginning during
5 such plan years.

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